

REMARKS

Claims 1-19 were rejected under 35 U.S.C. §103 as being unpatentable over The Admitted Prior Art (AAPA) in view of United States Patent No. 5,897,797 to Drouillard. Applicant requests reconsideration and withdrawal of the Examiner's rejections. Allowance of the application is requested.

Applicant has amended the section entitled Background of the Invention to delete the paragraph on lines 5-9. Applicant has effected same to ensure that there is no confusion. Clearly, this paragraph related to the field of the invention as it directly related to the claimed invention.

Applicant agrees with the Examiner that the AAPA discloses that it is known to mark foodstuff by etching a mark and using food coloring to enhance the mark. However, Applicant submits that neither the AAPA nor Drouillard '797 discloses an apparatus for marking a foodstuff with an etched mark using "a spray gun for spraying a food grade coloring over the etched mark" as claimed in claim 1 and does not disclose a method of marking a foodstuff with an etched mark by "using the spray gun to spray food grade coloring on said mark" as claimed in claim 13. Applicant respectfully requests that the Examiner specifically point out by where in the AAPA or in Drouillard '797 that this is disclosed.

The prior art, such as that disclosed in Drouillard '797, discloses a swabbing station to *swab* food grade coloring on the foodstuff over the etched mark to provide a visually enhanced contrast between the etched mark and the remainder of the foodstuff. This swabbing station is not shown as, disclosed as or suggested to be a spray gun. As disclosed in Drouillard '797 to

perform the swabbing, the etched foodstuff passes under an application pad, a sponge, that has been soaked with a food grade coloring to swab the surface of the foodstuff around the mark.

As discussed in the background section of the present application, the swabbing station while functional, has been found to have short comings, particularly in the produce industry.

5 Since the original provision of the swabbing station described in Drouillard '797, significant advances have been made in the conveying equipment industry with which the swabbing station could not be engineered or redesigned to adapt to the advances in the conveyors. Conveyors have advanced in the areas of conveying speed and electronic sizing technology which made the swabbing station described in Drouillard '797 obsolete. Also, the swabbing station described in
10 Drouillard '797 cannot be electronically controlled or programmed; this is required in order to selectively and precisely apply the food grade coloring over the mark. Originally, when the swabbing station was designed, the conveyors worked at a maximum speed of 5 to 6 cps (cps per second). Conveyors now routinely run at 8 to 14 cps. The continual development and updates to the laser has enabled the laser to keep pace with this speed, but the swabbing station
15 could not.

The piece of produce is placed in a cup (this could also be a roller but it is called a cup, this term is universally known and used in the agriculture product conveying business) and moved down the conveyor line. When the conveyor line speed is increased to and over 6 cps, the swabbing applicator arm tends to bounce off the piece of produce and skip over the next piece of
20 produce. When the tension on the swabbing arm is increased to overcome this bouncing, the swabbing arm resists rising up and over the piece of produce, which in turn causes the piece of produce to be pushed backwards and into the following cup, which if there is a piece of produce

in this cup, a chain reaction of produce being forced backwards is caused. This is called migration in the conveyor industry. The negative effect of this migration is that the produce's position is lost with respect to the position the electronic sizer had recorded and stored, that is, the stored reference of that produce has not changed from the original location when the produce was analyzed, and since this location cannot be updated with the new location (due to migration), this results in an incorrectly processed piece of produce.

In addition, all the produce on the conveyor is swabbed regardless of whether the produce had been marked. This is a waste of food grade coloring on produce that has not been marked; it also leaves an undesirable appearance on the produce from the produce packer's point of view.

The produce packer requires that only the marked produce have the food grade coloring enhancement applied to the mark. There are times when a specific size, weight, color, etc., is needed solely for bagging, and this bagged produce does not require individual labeling but is processed at the same time on the same packing line as individually sold pieces which require labeling.

The swabbing station is not accurate, which is a requirement, in that the swabbing station cannot be controlled in such a way as to start applying the food grade coloring at the beginning of the mark and stop at the end of the mark. The applicator of the swabbing station had to be designed large enough to cover the longest and largest possible mark that can be printed, and because of this, there is a large difference between the largest possible mark and the smallest mark, which results in a large colored area if the mark is small. This is very inefficient and the swabbing station cannot be changed in real time to accommodate these differences, which results in a waste of food grade coloring and an undesirable appearance.

In addition, there can also be a problem with not cleaning or improper cleaning of the application pad which contacts the produce to apply the food grade coloring over the mark. Cleaning the application pad must be properly done to prevent plugging from wax build up and also, most importantly that it does not transfer decay organisms from one produce to another.

5 Monitoring the application pad is required, and must be done regularly. The produce is waxed as a normal part of the process. Waxing is effected before the mark is etched. The wax tends to be tacky and because the application pad contacts the produce, the wax slowly builds up on the application pad which prevents application pad from operating properly and efficiently. This results in the requirement of frequent changing and cleaning of the application pad. The other
10 problem that arose was improper cleaning methods. If the applicator pad is not properly cleaned, bacterial and or fungal growth may arise. This could possibly spread the decay to each produce which contacts the application pad. As a result, the swabbing station requires much more care and maintenance that was acceptable to the customer.

Therefore, the claimed invention provides an apparatus and method of marking foodstuffs
15 which overcomes the problems presented in the AAPA and in Drouillard '797 by providing the spray gun to provide the food dye over the etched mark.

Therefore, Applicant respectfully submits that the claims are allowable. Applicant requests reconsideration and withdrawal of the Examiner's rejections. Allowance of the application is requested.

In view of the above, Applicant respectfully submits that the claims of the application are allowable over the rejections of the Examiner. Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

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By: _____

Richard A. Giangiori, Reg. No. 24,284
Linda L. Palomar, Reg. No. 37,903

TREXLER, BUSHNELI, GIANGIORGI
BLACKSTONE & MARR, I.TD.
105 W. Adams Street
Suite 3600
Chicago, Illinois 60603
(312) 704-1890

937260